

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JENNIFER MOONEY,

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social
Security,

Defendant.

No. 1:16-CV-03006-RHW

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND REMANDING
FOR BENEFITS**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 13, 14. Ms. Mooney brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's final decision, which denied her application for Supplemental Security Income under Title XVI of the Social Security Act, 42 U.S.C §§ 1381-1383F. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the Court GRANTS Ms. Mooney's Motion for Summary Judgment and REMANDS for benefits.

I. Jurisdiction

Ms. Mooney filed an application for Supplemental Security Income on November 28, 2012, AR 336-39, alleging onset of disability on September 28, 2012.¹ AR 336. Her application was initially denied on January 31, 2013, AR 264-267, and on reconsideration on May 8, 2013, AR 276-78. On November 14, 2013, Administrative Law Judge (“ALJ”) Mary Gallagher Dilley held a video hearing from Seattle, Washington. AR 19. On April 21, 2014, ALJ Dilley issued a decision finding Ms. Mooney ineligible for benefits. AR 16-36. The Appeals Council denied Ms. Mooney’s request for review on November 17, 2015, AR 1-4, making the ALJ’s ruling the “final decision” of the Commissioner. Ms. Mooney timely filed the present action challenging the denial of benefits, and accordingly, her claims are properly before this Court pursuant to 42 U.S.C. § 405(g).

II. Sequential Evaluation Process

The Social Security Act defines disability as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be

¹ Ms. Mooney previously filed an application for Supplemental Security Income benefits on November 8, 2007, but after remand and a second hearing before an ALJ, Ms. Mooney was found not to be disabled within the meaning of the Social Security Act. AR 19. This was not appealed and not at issue in this case.

1 under a disability only if the claimant's impairments are of such severity that the
2 claimant is not only unable to do his previous work, but cannot, considering
3 claimant's age, education, and work experience, engage in any other substantial
4 gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A) &
5 1382c(a)(3)(B).

6 The Commissioner has established a five-step sequential evaluation process
7 for determining whether a claimant is disabled within the meaning of the Social
8 Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsbury v.*
9 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

10 Step one inquires whether the claimant is presently engaged in "substantial
11 gainful activity." 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful
12 activity is defined as significant physical or mental activities done or usually done
13 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in
14 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§
15 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

16 Step two asks whether the claimant has a severe impairment, or combination
17 of impairments, that significantly limits the claimant's physical or mental ability to
18 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe
19 impairment is one that has lasted or is expected to last for at least twelve months,
20 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &

1 416.908-09. If the claimant does not have a severe impairment, or combination of
2 impairments, the disability claim is denied, and no further evaluative steps are
3 required. Otherwise, the evaluation proceeds to the third step.

4 Step three involves a determination of whether any of the claimant's severe
5 impairments "meets or equals" one of the listed impairments acknowledged by the
6 Commissioner to be sufficiently severe as to preclude substantial gainful activity.
7 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;
8 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or
9 equals one of the listed impairments, the claimant is *per se* disabled and qualifies
10 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to
11 the fourth step.

12 Step four examines whether the claimant's residual functional capacity
13 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f)
14 & 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant
15 is not entitled to disability benefits and the inquiry ends. *Id.*

16 Step five shifts the burden to the Commissioner to prove that the claimant is
17 able to perform other work in the national economy, taking into account the
18 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),
19 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this
20 burden, the Commissioner must establish that (1) the claimant is capable of

1 performing other work; and (2) such work exists in “significant numbers in the
 2 national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,
 3 676 F.3d 1203, 1206 (9th Cir. 2012).

4 **III. Standard of Review**

5 A district court's review of a final decision of the Commissioner is governed
 6 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the
 7 Commissioner's decision will be disturbed “only if it is not supported by
 8 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,
 9 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than
 10 a mere scintilla but less than a preponderance; it is such relevant evidence as a
 11 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*
 12 *Chater*, 108 F.3d 978, 980 (9th Cir.1997) (quoting *Andrews v. Shalala*, 53 F.3d
 13 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining
 14 whether the Commissioner’s findings are supported by substantial evidence, “a
 15 reviewing court must consider the entire record as a whole and may not affirm
 16 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*
 17 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879
 18 F.2d 498, 501 (9th Cir. 1989)).

19 In reviewing a denial of benefits, a district court may not substitute its
 20 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.

1 1992). If the evidence in the record “is susceptible to more than one rational
2 interpretation, [the court] must uphold the ALJ's findings if they are supported by
3 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,
4 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
5 2002) (if the “evidence is susceptible to more than one rational interpretation, one
6 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,
7 a district court “may not reverse an ALJ's decision on account of an error that is
8 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is
9 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.
10 The burden of showing that an error is harmful generally falls upon the party
11 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

12 **IV. Statement of Facts**

13 The facts of the case are set forth in detail in the transcript of proceedings,
14 and accordingly, are only briefly summarized here. Ms. Mooney was 38 years old
15 on the date of her application. AR 29. Ms. Mooney has at least a high school
16 education and can communicate in English. *Id.* She has no past relevant work
17 experience. *Id.* Ms. Mooney alleges the following conditions: degenerative disc
18 disease, fibromyalgia/pain disorder, cellulitis, obesity, affective disorder, anxiety
19 disorder, personality disorder, and heroin addiction. ECF No. 13 at 1.

20 //

V. The ALJ's Findings

The ALJ determined that Ms. Mooney was not disabled under the Social Security Act and denied her application for benefits. AR 19-30.

At step one, the ALJ found that Ms. Mooney had not engaged in substantial gainful activity since the date of application, November 28, 2012 (citing 20 C.F.R. § 416.971 *et seq.*). AR 21.

At step two, the ALJ found Ms. Mooney had the following severe impairments: obesity, bilateral lower extremity cellulitis, pain disorder, affective disorder, anxiety disorder, and personality disorder (citing 20 C.F.R. § 416.920(c)). AR 21-23.

At step three, the ALJ found that Ms. Mooney did not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 C.F.R. §§ 404, Subpt. P, App. 1 (citing 20 C.F.R. §§ 416.920(d), 416.925, & 416.926). AR 23-25.

At step four, the ALJ found that Ms. Mooney could perform sedentary work as defined in 20 C.F.R. § 416.967(a), except that she could: lift and carry ten pounds occasionally and less than ten pounds frequently; stand and walk no more than two hours in an eight-hour workday; never climb ropes/ladders/scaffolds; occasionally climb ramps/stairs, kneel, and crawl; frequently stoop and crouch;

1 avoid concentrated exposure to extreme cold and hazards; and perform simple,
2 routine, and repetitive tasks. AR 25-29.

3 The ALJ found that Ms. Mooney had no past relevant work and thus,
4 transferability of job skills was not an issue. AR 29.

5 **At step five**, the ALJ found that, considering her age, education, work
6 experience, residual functional capacity, and acquired work skills from past
7 relevant work, in conjunction with the Medical-Vocational Guidelines and the
8 testimony of a vocational expert, there are jobs that exist in significant numbers in
9 the national economy that Ms. Mooney can perform, including semi-conductor
10 bender, assembler/inspector, and bench assembler. AR 29-30.

11 **VI. Issues for Review**

12 Ms. Mooney argues that the Commissioner's decision is not free of legal
13 error and not supported by substantial evidence. Specifically, she argues the ALJ
14 erred by improperly weighing the medical evidence and improperly rejecting her
15 symptom testimony. ECF No. 13 at 6.

16 **VII. Discussion**

17 **A. The ALJ improperly rejected the opinion of treating physician Dr.**

18 **Caryn Jackson, M.D.**

19 The Ninth Circuit has distinguished between three classes of medical
20 providers in defining the weight to be given to their opinions: (1) treating

1 providers, those who actually treat the claimant; (2) examining providers, those
2 who examine but do not treat the claimant; and (3) non-examining providers, those
3 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th
4 Cir. 1996) (as amended).

5 A treating provider's opinion is given the most weight, followed by an
6 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the
7 absence of a contrary opinion, a treating or examining provider's opinion may not
8 be rejected unless "clear and convincing" reasons are provided. *Id.* at 830. If a
9 treating or examining provider's opinion is contradicted, it may only be discounted
10 for "specific and legitimate reasons that are supported by substantial evidence in
11 the record." *Id.* at 830-31.

12 The ALJ may meet the specific and legitimate standard by "setting out a
13 detailed and thorough summary of the facts and conflicting clinical evidence,
14 stating [his or her] interpretation thereof, and making findings." *Magallanes v.*
15 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When
16 rejecting a treating provider's opinion on a psychological impairment, the ALJ
17 must offer more than his or her own conclusions and explain why he or she, as
18 opposed to the provider, is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th
19 Cir. 1988).

1 Dr. Jackson treated Ms. Mooney over multiple years, and as her treating
2 physician, Dr. Jackson's opinions are entitled to the highest level of deference. The
3 ALJ gave "some weight" to the form completed by Dr. Jackson in December 2012,
4 which limited Ms. Mooney to the sedentary level of work. AR 27-28, 782-84. The
5 ALJ, however, gave essentially no weight to the subsequent form completed by Dr.
6 Jackson in September 2013 that discussed specific limitations, including the need
7 to lie down during the day and to elevate her legs. AR 28, 1058. Dr. Jackson's
8 opinion also states that Ms. Mooney would miss four or more days per month on
9 average due to "exacerbations of chronic pain" and increased tension and anxiety.
10 AR 1059. ALJ Dilley rejected this opinion because Dr. Jackson allegedly "failed to
11 explain with the use of objective medical findings why these conclusions were
12 reached." AR 28.

13 Dr. Jackson's September 2013 statement report is far more detailed than the
14 December 2012 statement that was curiously given more weight despite less
15 objective findings. *Cf.* AR 780-82 and 1058-59. Moreover, the ALJ's assertion that
16 Dr. Jackson failed to provide objective findings in her September 2013 statement is
17 inaccurate. *Id.* For each of the limitations detailed, Dr. Jackson provides
18 explanations, based on her clinical observations over the period of time she served
19 as Ms. Mooney's treating physician. The ALJ's blanket statement that this form
20 should be given minimal weight on this basis does not satisfy the standard. *See*

1 *Lester v. Chater*, 81 F.3d at 830-31. Thus, the ALJ erred in rejecting Dr. Jackson's
2 September 2013 statement.

3 **B. When the limitations proposed by Dr. Jackson are accepted as true, the**
4 **record demonstrates Ms. Mooney is disabled.**

5 "Where the Commissioner fails to provide adequate reasons for rejecting the
6 opinion of a treating or examining physician, we credit that opinion 'as a matter of
7 law.'" *Lester*, 81 F.3d at 834 (quoting *Hammock v. Bowen*, 879 F.2d 498, 502 (9th
8 Cir. 1989)). Dr. Jackson opined that Ms. Mooney would need to elevate her legs
9 throughout the day and would miss at least four days per month on average due to
10 her impairments. AR 1058-59. When vocational expert Trevor Duncan was asked
11 if the requirement to elevate her legs was added to Ms. Mooney's assessed residual
12 functional capacity, Mr. Duncan testified that this would eliminate the ability to
13 sustain gainful employment. AR 177. Likewise, the impact of four or more missed
14 workdays per month would limit the ability to sustain gainful employment
15 according to Mr. Duncan. *Id.* Thus, based on Mr. Duncan's testimony as a
16 vocational expert, either the requirement for Ms. Mooney to elevate her legs or the
17 likelihood of four or more missed workdays per month would preclude her ability
18 to work. With credit of this testimony, the Commissioner fails to sustain her
19 burden that there are other jobs available in the sufficient quantities in the national
20 economy that Ms. Mooney can do. *Beltran*, 676 F.3d at 1206.

1 Case law dictates that remand for an award of benefits is appropriate when:

- 2 (1) the ALJ has failed to provide legally sufficient reasons for rejecting
3 a medical opinion;
4 (2) there are no outstanding issues that must be resolved before a
5 determination of disability can be made; and
6 (3) it is clear from the record that the ALJ would be required to find the
7 claimant disabled were such evidence credited.

8 *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000) (quoting *Smolen v. Chater*,
9 80 F.3d 1273, 1292 (9th Cir. 1996)).

10 Based on the testimony of Mr. Duncan, it is clear that if Dr. Jackson's
11 opinion had been properly credited, Ms. Mooney would have been found to be
12 disabled because there would be no jobs that exist in significant quantities in the
13 national economy that she could perform. *See Beltran*, 676 F.3d at 1206. The Court
14 need not even determine whether the ALJ erred with regard to her analysis of Ms.
15 Mooney's subjective symptom complaints because upon credit of Dr. Jackson's
16 opinion, the record shows Ms. Mooney is disabled. No purpose would be served by
17 remanding for further proceedings; thus, the appropriate remedy is to remand for
18 immediate payment of benefits.

19 **VIII. Conclusion**

20 Having reviewed the record and the ALJ's findings, the Court finds the
ALJ's decision is not supported by substantial evidence and not free of legal error.
Accordingly, **IT IS ORDERED:**

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1 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **GRANTED**.

2 2. Defendant's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.

3 3. **Judgment shall be entered for Plaintiff** and against Defendant.

4 4. This matter is **REMANDED** for immediate payment of benefits.

5 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
6 Order, forward copies to counsel and **CLOSE the file**.

7 **DATED** this 12th day of October, 2016.

8 *s/Robert H. Whaley*
9 ROBERT H. WHALEY
Senior United States District Judge